

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION**

SENTINEL TRUST COMPANY,
Danny N. Bates, Clifton T. Bates,
Howard H. Cochran, Bradley S. Lancaster,
and Gary L. O'Brien

Plaintiffs

v.

KEVIN P. LAVENDER, Tennessee Commissioner
of Financial Institutions

Defendant

Civil Action No.:

3-04-0836

JUDGE NIXON

**PLAINTIFFS' BRIEF IN OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS**

In addition to prior briefing, Plaintiffs present this brief to clarify their position: The pleadings presented what Plaintiffs viewed as a strong case for injunctive relief to preserve Sentinel's assets and existence until either this Court or a state court could render final judgment on whether Defendant Commissioner was empowered, under the law and the facts, to destroy a trust company under the mistaken pretense that it was a bank. Recognizing that this Court's knowledge of case law on the federal constitutional issues involved is far superior—from many long years of experience in hearing and deciding such cases—to that of private counsel, the lengthy passage of time without the entry of any order by this Court might lead to an intuitive assumption that the Court may view the case as without merit.

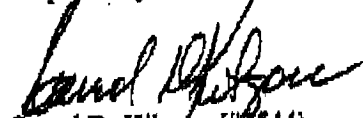
That the Chancery Court viewed the case as without merit is apparent from its opinion which, as Plaintiffs have demonstrated, gave no legal rationale recognizable under Tennessee case law, for its denial of the interlocutory order of *supersedeas*. Plaintiffs view this as accurate because, as respectfully communicated to the Chancery Court, its opinion gave no evidence that it followed any part of the law of statutory construction, it affirmatively demonstrated that it was contrary to a basic part of that applicable body of law, and it made no attempt to demonstrate that Tennessee's law of statutory construction is irrelevant to the intellectual task of construing this particular statute, which statute is unquestionably complex.

Plaintiffs have already pointed out to this Court the Supreme Court's characterization of the Due Process clauses as prohibiting arbitrary, unreasoned governmental destruction of property and rights without legal justification (Temporary Restraining Order Brief, p. 3; Reply Brief re: Temporary Restraining Order, p.7). It is universally known that the judicial opinion expounds the reason for the decision and demonstrates its correctness. Plaintiffs and their counsel find no such demonstration in the state Court orders herein—either the order denying the application for *supersedeas*, the order granting the discretionary appeal, or in the Court of Appeals' order refusing to accept jurisdiction of that appeal. There is no rationale with which to argue by pointing out logical errors. There has been no judicial or administrative response to what Plaintiffs perceive as their own rational demonstration, under prior Tennessee caselaw and present statutes, that the Defendant Commissioner is not vested with the power he has usurped and that his actions are equally based upon factual assumptions that are not only false but unintelligent. If such action is not arbitrary and not contrary to the law of the land, Plaintiffs cannot imagine governmental action that would qualify as arbitrary. Plaintiffs have not asked this Court to review state judicial actions, as Defendant asserts. They believe they have demonstrated that, at least at the trial level, Tennessee has not made available to them any remedy which will enunciate and apply the law of Tennessee as clearly defined in authoritative decisions.

Plaintiffs and their counsel firmly believe that the action of defendant is illegal and unjustifiable. There is no way they can protect any right they may have to compensation for this destructive action by the State of Tennessee except by obtaining an injunctive bar to liquidation or

by avoiding entry of a judgment that would be a *res judicata* bar to obtaining relief, in a court of competent jurisdiction, for a Tennessee officials' seizure of their valuable business and property without just compensation and without any public justification therefor. They have preserved their right to pursue the Tennessee remedies and the Complaint makes it perfectly clear that they intend to pursue all available remedies—including the pending *certiorari* case in the Davidson County Chancery Court—in an attempt to save the business and properties of Sentinel and its owners or to achieve a final judgment there, either one favorable to them or one from which there will be an appeal of right within the state judicial system.

Respectfully submitted,



Carol D. Kilgore (#2344)
227 Second Avenue, North
Nashville, Tennessee 37201-1693
(615) 254-8801
Attorney for Plaintiffs

Certificate of Service

It is hereby certified that on this November 5, 2004, a copy of the foregoing motion has been fax-transmitted and mailed to the offices of JANET M. KLEINFELTER, Esq., Senior Counsel, Financial Division, Attorney-General of Tennessee, 425 Fifth Avenue, North, Nashville, Tennessee 37243.

